IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 688 OF 2005

Shri Mahadev Krishna Lohar
(since deceased, through his legal
heirs). ... Appellant

V/s

Shri Vishnu Narayan Kshirsagar & ors. ... Respondents

Mr. Sandesh D. Patil for the appellant.

Mr. Vishwanath Talkute for the respondents.

CORAM: P.V. KAKADE, J.

DATED: 26TH JULY, 2005

P.C.:

1. The appellant has preferred this appeal against the judgment and order passed by the Addl. District Judge, Satara dated 25.2.2005 allowing the appeal and setting aside the order passed by the Jt. Civil Judge, Jr.Divn., Satara dated 21.4.1994 dismissing the suit of the plaintiff.

2. I have heard the learned counsel for both parties. Perused the record.

3. The plaintiffs filed the suit for declaration and permanent injunction and alternatively for possession of the suit property.

4. The learned Trial Judge, after hearing both parties, came to the conclusion that the plaintiffs failed to prove his possession referable to valid title to the suit property and, as such, he was not entitled for declaration to that effect. It was also held that there was no question of any obstruction to the plaintiffs' possession and, therefore, the suit came to be dismissed.

5. The appeal was carried to the District Court, Satara. The learned Addl. District Judge, Satara, after hearing both parties, decided the appeal holding that the judgment and order passed by the lower Court was erroneous and suit came to be decreed with declaration that the plaintiffs were exclusive owner and in possession of the suit property and City Survey record dated 25.3.1990 in respect of the suit property was not binding on the appellants.

6. At the outset, it may be noted that there is no substantial question of law involved in this appeal.

The learned counsel for the appellants sought to raise two questions, namely, that the description of the property given by the plaintiffs was vague and, therefore, identity of the property could not be determined and, as such, the findings recorded by the lower appellate Court are wrong. Seconbdly, it was submitted that the City Survey record was based on the survey made in absence of the concerned plaintiffs and, therefore, was not binding upon the appellants and, as such, the judgment of the lower appellate Court suffered from recording perverse findings. In this regard, it must be noted that, as the lower appellate Court has observed, though there was some variance to the extent of description of north-south length of the impugned property, it was observed that it was bonafide mistake which has occurred while writing description of the western side boundary and except that there was no variance in the description of the property and hence on that count the suit could not be dismissed. Secondly, it must be noted that the Sanad is issued on the basis of survey when, admittedly, the appellant was not served with notice by the City Survey Officer and, as such, on that count, the finding recorded by the Trial Court was also held to be erroneous. Besides these two aspects, no other points are raised for consideration. Taking

into account all these factual matrix relating to these points, I am of the view that the findings recorded by the lower appellate court do not suffer from any perversity as those are based on factual aspects of the evidence as can be seen from the record and, therefore, in my considered view, no interference is called for in this appeal.

7. In the result, the appeal stands dismissed with no order as to costs. Consequently, Civil Application No. 1170 of 2005 also stands dismissed with no order as to costs.

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